Supreme Court, U.S.
FILED
JUN 24 1993
OFFICE OF THE CLERK

NO. 92-1830

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1992

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

REPLY BRIEF

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UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION

> ". . . nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

18 U.S.C. Sec. 1962(a)

18 U.S.C. Sec. 1964(c)

42 U.S.C. Sec. 1983
Deprivation of Civil Rights
"under color of state law"

PETITIONER'S REPLY BRIEF

> Petitioner paid what he owed to his country in June 1944 when he led his unit ashore on Omaha Beach and, ultimately, on to the Elbe. Now, he asks that his country do what it surely owes him; protection of his rights before any court in the United States.

PRELIMINARY COMMENT

Respondents' Brief is unsigned and should be refused by the Court.

If the Court accepts the unsigned brief, Petitioner requests that the Court direct its attention to the habit of the Respondents, through their counsel, to make substantive false statements of fact without following up with any evidence to support those facts. This habit is prevalent throughout their brief and Petitioner will point them out in detail, with proof, in his arguments in reply to the enumerated questions in every instance they arise.

As a good example of this tactic, the Respondents, right off the bat, tell this Court in their STATEMENT OF THE CASE (Page 2):

> ". . . . the petitioner's statement of the case and statements of facts material to the five issues presented are replete with inaccuracies."

Then, they state it would take too much space, and be a waste of the Court's time to point out all of those errors.

But, why not point out just one of those "inaccuracies"? That would not take much of the space, nor the Court's time, would it?[1]

Before ending this Preliminary Comment, it is important to address Respondents' choice not to make a statement of the case but, instead, to incorporate, by reference, the statement of facts given by the Maine Supreme Judicial Court in their Decision which is the subjct of this Petition. In doing so they say that the facts are:

"Accurately summarized" in that decision.

The facts are not accurately summarized in that Decision for, if they were, the Maine Court would have recognized the wrongs that were heaped upon Spickler in the trial court and would have made this Petition unnecessary.

There is, of course, insufficient spare time for the Petitioner to point out, in detail, all of the errors in that Decision, but, here is one example:

On Page A-3 of the Petition, the Maine Supreme Court Decision states, with reference to the Roque Bluffs Subdivision of Chambers Point, Inc.,:

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[1]This tactic of arguing with false facts was successfully used in their ninety-seven page Brief to the Maine Supreme Judicial Court, against which Petitioner submitted a seventy-six page (fully documented) Reply Brief, as well as a 146 page (fully documented) Brief. The Maine Court, nevertheless, ruled in the bank's favor and this honorable United States Supreme Court will never know the truth about this case if doesn't decide to review it.

"Immediately after the auction, the neighbor(s) successfully sued claiming that there was no right of access over the land."

This statement is misleading and is not a true representation of the outcome of that litigation which was accurately stated in Spickler's appeal papers, which papers, Petitioner believes, the Maine Supreme Court never read, nor cared to read.

The following quotation is from the Reply Brief of Spickler presented to the Maine Supreme Judicial Court which addressed the true facts:

"They (the Appellees) then state that the Roque Bluffs (Chambers Point) development, as well as the R. D. Realty development failed (as "large schemes") because the Spicklers, "through bad planning and timing" "got in over their heads". On the contrary, the record of this case shows that the Chambers Point development was hampered by a frivolous claim of one of the four property owners which caused the Superior Court of Washington County to issue what turned out to be an unwarranted injunction against the use of a valid right-of-way."

At this point Footnote #1 reads:

"This injunction was ultimately abandoned by Gibbs, who finally agreed with Spickler that Chambers Point did indeed have a right-of-way over their property from the beginning of the dispute, and formally granted the easement."

The Spickler Reply Brief then goes on:

"The appellees also wrongfully claim that the neighboring landowner(s) embroiled the Spicklers in litigation concerning the right-of-way when the

record clearly shows that there were four landowners, including Gibbs, who owned the land over which the right-of-way traveled. Three of these four owners agreed immediately with Spickler that he had a right-of -way and it was only Mrs. Gibbs who sought to rip off the Spicklers when she brought the aforestated frivolous action." "To try to mislead the Law Court into believing that all of the neighbors sued him is, if not dishonest, a continuation of disingenuity."

"It is a furtherance of their disingenuity when the appellees state that Spickler lost to Gibbs in 1984 without clearly revealing to the Court in the same sentence that Gibbs abandoned that victory over Spickler by finally settling with him on Spickler's original terms. This conduct is clearly in violation of Me.R.Civ.P. 11 and 3.7(e) (1) (i) of the Maine Bar Rules."

"It is clear dishonesty by acts of omission. What they are saying to the Court is analogous to saying: "We didn't lie when we said we didn't smoke dope, because when we smoked it, we didn't inhale."

[End of Quotation]

I. **REPLY TO RESPONDENTS' WRONGFUL STATEMENT THAT THIS COURT LACKS JURISDICITON BECAUSE PETITION FAILED TO RAISE A FEDERAL QUESTION.**

Respondents, in support of this contention argue that Petitioner failed to satisfy the requirement of Rule 14.1(h) in that:

> . . . . "he has failed to advise this Court in what manner the federal questions on which he seeks review were raised."

Rule 14.1(h) requires that the statement of the case shall specify the stage in the proceedings, both in the court of first instance and in the appellate courts at which the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed upon by those courts.

The Court has stated that the jurisdiction of this court can arise if the record as a whole shows, either expressly, or by clear implication that the federal claim was adequately presented in the state system. Webb v. Webb, 451 U.S. 493, 496 (1981)

Question I was shown by Petitioner's Statement of the Case to be adequately presented in the state system.

On Page 7 of the Petition, the Statement of the Case clearly shows that, at the trial level, Spickler, both orally and in writing, pressed for his rights to be asserted, and, it clearly shows that it resulted in an order from Judge Brennan that he must cease referring to anything pertaining to Lot #26:

> (made it clear) "that the claim for Lot #26 was Olive Spickler's alone."

From that point forward, in the trial court, Spickler could have been held in contempt of Judge Brennan's Order if he continued to raise anything pertaining to Lot #26 in defiance of the order.

On Pages 10 and 11 of the Petition, it was shown that Robert Spickler, beginning at least three

years before the trial, was blocked continually by th court from joining his wife, and references to the record were made.

All of the aforestated, as the Statement reveals, were presented on the Appeal to the State of Maine Supreme Judicial Court and were documented in two briefs and the Appendix to those Briefs, and again, for the third time, on a Motion for Reconsideration, (Pages 11 and 13 of Petitioner's statement of the Case).

These instances in the State Courts concerning the raising of Question I, satisfy this Court's requirement of at least showing a clear implication that the federal question arose in the lower as well as the state appellate court.[2]

As to Question II, as it was shown with reference to Question I, the Petitioner's statement of the case shows how the federal question was raised in the trial court and the state appellate court at Pages 13, 14, and 15.

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[2]Petitioner Robert Spickler's Briefs on Appeal to the Maine Supreme Judicial Court consist of over two hundred pages which, in minute detail, with references to the record in the trial court, supported by an appendix so extensive it consists of six volumes, supports every statement of fact that Petitioner has made to this Court.

As to Question III, as it was shown with reference to Questions I and II, the Petitioner's statement of the case shows how the federal question was raised in the trial court and the state appellate court at Pages 16 and 17.

As to Question IV:

The Injunction placed upon Robert Spickler restricting his free access to the courts of Maine, in anticipation that he may bring a baseless lawsuit against the bank and/or its agents where there is no evidence to support the fact that he may do so, is clearly a violation of his 14th Amendment guarantee of equal treatment under the law with all others, whether they be represented by counsel or not.

The fact that this federal issue was raised at each opportune time, at least by clear implication, are stated on Pages, 17, 18, 19, 20, 21 and 22.[3]

As to Question V:

The circumstances showing that Petitioner raised the question of unequal treatment by the trial court, and was clearly treated unequally while legitimately seeking relief for his claims in the

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[3]This issue was raised during the trial but not heard until several months after the trial, at which time the issue of unequal treatment was argued and repeated on appeal to the Maine Supreme Judicial Court.

state courts, clearly shows by implication, or otherwise, that the federal question V was properly raised.[4]

A. REPLY TO RESPONDENT'S ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION I:

Were defendant's costs in defending the Lot 26 claim levied against petitioner without due process of law?

Respondents, again, misrepresent the record in the Maine courts by making the irresponsible statement that the claim was "first raised" in a Motion for Reconsideration for amendment of the Decision of the Maine Supreme Judicial Court.

This issue was raised twice before in the Briefs on Appeal to the state court. It was raised in the original Brief at Page 67 under the heading RELIEF REQUESTED. It was raised again in the Reply Brief on Appeal at Page 75 at Paragraph 2.a.

This Court should now begin to see what the Petitioner meant in his preliminary comment in this reply brief concerning the lack of veracity of the Bank's counsel.

As far as the raising of the issue in the lower court, it was adequately presented many times, as the record shows, to the trial judge, at the very least by the clear implication of the many attempts he made to be joined as a party in his wife's claim

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[4] Unequal treatment of a party by any state court is an obvious and plain error in violation of the guarantees of the Fourteenth Amendment to the United States Constitution and, as such, must be recognized, sua sponte, by any state court.

on Lot #26. For example:

9-9-91 Spickler's Motion for recusal of Judge Brennan. [State APPENDIX Vol.III Pg. 477 et seq.]

3-12-89 Spickler's Motion to Amend Complaint to include Rights Assigned to him by R. D. Realty Corporation. [State APP. Vol.I - Pgs. 106, 116]

2-28-91 Spickler's Motion to join R. D. Realty Corporation as a necessary party. [State APP. Vol.I - Pg. 170]

3-25-91 Robert Spickler's Response to Defendants' Claim that He is Practising Unauthorized Law. [State APP. Vol.I - Pg. 170]

There are several more docket entries which repeatedly portray the multiple efforts made by Robert Spickler to join his wife, Olive, in the Lot #26 claim, all cumulative evidence of this continuing effort.

The record in both levels of the lower court show that Petitioner satisfied the requirements of Webb by a clear implication that the federal question of the taking of property without due process of law was adequately presented in the state system.

Perhaps, the Respondents feel that Spickler should have included, in his various attempts to join his wife, the assertion that if the court bars him from joinder it would be a violation of his 14th Amendment rights if the court then proceeded to levy Defendant's costs against him should his wife fail on her claim.

As ludicrous as it is, Repondents would not

hesitate to argue that Spickler should have anticipated the levy and argued against the possibility of the levy.

In any event, irrespective of all of the above, the taking of one's property without due process of law is so clearly forbidden by the 14th Amendment, it is so fundamental, so plain, and so apparently harmful to the petitioner that any reviewing court should condemn it, sua sponte, even if the petitioner were negligent and didn't raise it himself.

B. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION II:

THE TRIAL COURT'S FAILURE TO ALLOW THE COMPLAINT TO BE AMENDED TO INCLUDE THE RICO CLAIM.

The Respondents appear to argue that the Maine Supreme Judicial Court and the trial court did not allow the RICO claim only because it came on the sixth day of the trial.[5]

The RICO claim is a federal right, the denial of which is properly before this Court because it should have been permitted to go to trial at the state level.

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[5]This is another blatant misrepresentation of the record. Nowhere did either Maine court state in their Decisions to block the RICO claim that they did so on the grounds that it came too late. Note that the Maine Supreme Court doesn't even mention the RICO claim at all in its decision, but indirectly may be referring to it by saying, "The remaining issues are without merit and require no discussion." [PETITION A-9]

Under the circumstances, this Court, if it does not grant "cert", should summarily order that the RICO claim's dismissal at the state level is without prejudice.

At Footnote 1 on their Page 6, the Respondents, who have avoided uttering a single word about the issue of Mr. Lucas' perjurious testimony and doctored documents in the state court, do so, now, for the first time. Perhaps they feel secure that this honorable Supreme Court will never see the COMPELLING EVIDENCE, because history shows that the granting of "cert" to anybody, especially pro se petitioners where it is unheard of. They will gamble that they will never be questioned by this court.

This RICO claim against this bank should not die on the shelves of the law libraries. Many banks, at least those in Maine, will be encouraged to mistreat the public as was the Petitioner in this case.

C. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION III:

WERE THE DUE PROCESS RIGHTS OF R. D. REALTY CORPORATION DENIED?

A review of the Petition and the voluminous record of the proceedings in the Maine Court show that for years the claim of R. D. Realty was pressed by Petitioner who was legally assigned those rights, and R. D. Realty, who was the principal player in the whole dispute never had its just claims submitted to a court of law.

If the double talk smoke screen put up by the respondents is all that is required to extinguish a citizen's right to not lose his property except through due process of law, the Constitution needs some changes, or, at least, a new interpretation.

D. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION IV:

> WHERE THERE WAS NO EVIDAENCE THAT SPICKLER EVER FILED A BASELESS LAWSUIT, WAS IT A DENIAL OF HIS DUE PROCESS RIGHTS TO EQUAL TREATMENT UNDER THE LAW WHEN HE WAS BARRED FROM FUTURE FREE USE OF THE COURTS?

The key phrase in this question is the phrase "baseless lawsuits".

The injunction issued by the trial court and confirmed by the Maine Supreme Judicial Court says:

> "The injunction sets up a screening process which will protect the defendants and their agents from having to defend against baseless claims."
>
> [Emphasis added]

Before the trial began, Respondents' counsel, Mr. Robitzek (he who is arguing against this petition) simply filed a list of twenty-six miscellaneous lawsuits brought both by, and against Spickler and/or his corporations; most of which were brought or defended by attorneys who represented Spickler. The trial court took judicial notice of that list.[6]

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[6]This Court is asked to take judicial notice that the case that Respondents' counsel, Mr. Robitzek, purposely omitted from the 26 cases he presented to the trial court is: Robert D. Spickler v. Joseph E. Brennan et als, Maine Superior Court of Cumberland County, Docket #74-452. Petitioner will address the particulars of this omitted case later in this Brief.

Respondents' counsel then argued that the list of lawsuits showed that the Petitioner had a habit of bringing baseless lawsuits and he feared that Petitioner would bring unending, baseless lawsuits against him and his clients.

From that point forward at every opportunity, even in this petition, Spickler has challenged Mr. Robitzek to identify one baseless lawsuit that he has ever brought and Robitzek has failed to identify any, even up until today.

An interesting and meaningful thing has happened since this petition was filed.

On May 17th, 1993, the case of Spickler v. Greenberg, Cumberland County Docket #85-687, went to trial. Greenberg is one of the "baseless" lawsuits cited on Mr. Robitzek's list presented to Judge Brennan for judicial notice.

On May 20th, the jury in Greenberg reached a unanimous verdict for Spickler. [Attached hereto at R.B.A. - Pg.1]

Even so, Petitioner bets that Mr. Robitzek will not remove Greenberg from the list notwithstanding the outcome of the trial if Mr. Robitzek has reason to use that list in the future.

In the footnote #2 on Page 9 of Respondents' Brief, they give as "an example" of Spickler's "baseless" arguments, the statement that Spickler made that even in this action he was successful in obtaining a jury verdict in his favor. Spickler's statement is absolutely correct in that the jury in

this very case unanimously agreed that Key Bank unlawfully took Spickler's escrow funds.

However, if Respondents are arguing that the "record belies" that Spickler did well over all in the lawsuit, Spickler agrees fully. Over all, Spickler did poorly in this lawsuit, and the proximate cause for his poor showing is at the root of this petition.

D(1) WHY IS IT MATERIAL TO THIS PETITION THAT THIS COURT TAKE JUDICIAL NOTICE OF THE CASE, ROBERT D. SPICKLER V. JOSEPH E. BRENNAN?

Background of this Question D(1)

In 1970, Robert Spickler and John Carzis of Cohasset, Massachusetts became joint venturers with the sole objective of developing some three hundred acres of residential property along the waterfront and marshes of Scarborough, Maine. Spickler and Carzis held an option to purchase the Scarborough real estate. The partners agreed that Carzis would provide all working capital and Spickler would oversee, on a full time basis, all efforts leading to a successful completion of a 1,000 unit condominium community and its subsequent marketing program.

Spickler's contribution was to obtain licenses and other approvals from all authorities, federal, state and municipal. This became a two year project. The plan was confronted by environmental issues including approval to dredge new canals through virgin marshlands to facilitate a 1,000-boat

private marina for the residents.

After Spickler's sole efforts resulted in all of the aforesaid approvals except the final approval of the Planning Board of the Town of Scarborough, which was imminent, Carzis made the inappropriate demand that Spickler contribute to the working capital on an equal basis with him. Spickler refused to contribiute in that it was not part of the agreement and Carzis who controlled the finances caused the option to purchase the Scarborough real estate to expire.

Spickler, who had logged thousands of hours on the project, demanded reimbursment from Carzis and Carzis threatened Spickler with a lawsuit to collect money he invested in that venture.

During heated discussions, Spickler told Carzis that he could wait for the Courts to settle their dispute because he could go on with his other development which Carzis knew existed somewhere along the thousands of miles of the Maine Coast but not specifically where it was.

Carzis retorted that he would attach that real estate immediately and tie up Spickler so that he would be forced to give in to Carzis' demands.[7]

At that time, in the Summer of 1972, Maine law permitted lawyers to start lawsuits and then, without

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[7] Spickler found out later that Carzis had caused the jointly held original option to expire but had, at the same time bought the Scarborough property by using his nephew's name and concealing that Carzis was the true buyer.

notice or Court approval, to attach people's property, including bank accounts and real estate which could force even the defendant who was in the right to settle the case.

In 1972, Joseph E. Brennan was the County Attorney for Cumberland County in which Spickler resided. On or about July 1, 1972, there appeared an article in the Portland Press Herald which reported that the County Attorney had advised all sheriffs to cease making pre-judgment attachments as had been the custom, because such attachments might be constitutionally defective according to a recent ruling by the U.S. Supreme Court.

Spickler, who was in the process of shifting his efforts from the venture in Scarborough to the Chambers Point licensed subdivision in Roque Bluffs, Maine, and who had, in the previous few days been threatened by Carzis who said he would attach his real estate, went to see County Attorney Brennan at his offices in the County Court House to inquire about his recent advisory to the county sheriffs and the effect it would have on Carzis' threats.

Spickler spent time with Mr. Brennan to tell him in detail all about the failed joint venture with Mr. Carzis. Spickler identified the location of the Roque Bluffs property and even told Mr. Brennan that he had reason to suspect that Mr. Carzis was seeking to buy the Scarborough development for himself. Spickler told Mr. Brennan that because Carzis brought an abrupt halt to the

Scarborough project and squeezed him out, Spickler was turning to his old approved subdivision in Roque Bluffs which, at the time, was his only way of earning a living.

After listening to Spickler, Brennan offered no comment except to say he should hire a lawyer.

Within ten days after the meeting with County Attorney Brennan, Spickler was surprised to receive a summons and complaint, together with a writ of attachment on the Roque Bluffs subdivision, filed on behelf of Mr. Carzis by the same Mr. Joseph E. Brennan to whom Spickler had spoken in his capacity as County Attorney.

Brennan proceeded, in spite of the efforts of Spickler's attorney to stop it, to tie up all of the Roque Bluffs subdivision for fourteen months until a court order forced him to release the writ. Spickler lost thousands of dollars in sales as a result.

Over the next two years Spickler sought to hire an attorney who would represent him in a suit against Mr. Brennan on the grounds of misfeasance as county attorney. After being turned down by over a dozen lawyers, Spickler brought the suit pro se with the help from the President of the Maine Bar Association, Mr. Charles Smith, who wrote the pro se complaint for Spickler and told him how to file it.

Spickler had never acted pro se before, nor had he ever thought about it until the Brennan matter.

Over the years, Mr. Brennan climbed the political ladder until, in 1978, he became Governor of Maine and continued to be Maine's Governor until 1986 when, by law he was not allowed to run, successively, again.[8]

Spickler has continued to press the Brennan case, even up until now. That case was initially thrown out by the Superior Court, appealed to the Supreme Judicial Court which vacated the summary judgment. It has gone through nineteen years of Superior Court proceedings and has been recently thrown out again by the trial court and is, <u>again</u> on appeal to the Supreme Judicial Court. This case is well known throughout the legal community of Maine, including all of the judiciary.

SUBSIDIARY QUESTION

IS THERE, AT LEAST, THE APPEARANCE OF A LIKELIHOOD THAT ROBERT D. SPICKLER MAY BE TREATED WITH BIAS BY THE MAINE COURTS?

In the years from 1974 through 1985, although Spickler had some trouble with unfair treatment by Superior Court judges, it was minimal, and when substantial error was made, Spickler <u>always successfully</u> appealed it to the Maine Supreme Judicial Court.[9]

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[8]It is judicially noticeable that in the past month, Mr. Brennan has announced publicly he is a candidate for governor in the 1994 race.

[9]In most of the 1970s, the Supreme Court was headed by Chief Justice Dufresne who was followed by Chief Justice McKusick who recently retired.

Under the Supreme Judicial Court as headed by Chief Justice Dufresne or Chief Justice McKusick, this case would not have received the short shrift that it did. Petitioner is strongly convinced that Chief Justice McKusick would not have condoned the outlandish treatment that Spickler received in this Key Bank case and this Court would not have to intervene.

These are material, substantive facts: All judges in Maine must be re-appointed to their positions on the bench every seven years.

Most of the judges now on the bench in Maine, whether they be on the S.J.C. or the lower courts, have been appointed or re-appointed by ex-Governor Joseph E. Brennan.

Petitioner does not ask, nor does he expect this Court to grant "cert" solely on the basis that the judges involved could be biased against Spickler for his nineteen year attack on their benefactor. He does, however, in view of the probable bias, ask the Court to take a closer look at the petition than it normally would with a pro se petitioner.

E. THE REPLY RELATING TO QUESTION V: WAS THE PETITIONER'S GUARANTEE OF PROTECTION BY THE FOURTEENTH AMENDMENT DENIED UNDER COLOR OF STATE LAW?

In their defense of this argument, the Respondents make the following contention.

1. The claim was not raised in the State Court.
2. It is unsupported by the record.
3. The trial court bent over backwards to "help" the Spicklers.

4. Petitioner's statement of fact in support of this issue is vague, inaccurate and misleading.

5. The trial court "was well within its discretion" in ignoring the issue of Spickler being physically shoved by the bank's attorney.

Petitioner replies to each of these contentions, as follows:

1. The basis for this claim was made to the trial court when

(a) Spickler virtually begged to present to the jury his rights in Lot #26 and was refused every time.

(b) After he was barred from having anything to do with Lot #26 and his wife, who was unqualified to present the claim lost it, Robert Spickler was ordered to pay Defendant's costs.

(c) Petitioner has the bank dead to rights on a violation of the RICO Act. He presented the compelling law clearly to the trial court and again, on appeal. The trial court would not permit the claim to be filed and offered no reason or law in its decision to block Spickler's claim.

The appeals court also offered no law or reason to back up the trial court and conveniently didn't even mention one word about the assigned error.

(d) The claims on Lot #26 of R. D. Realty, the principal, most important person in the lawsuit, were blatantly blocked for years as Spickler doggedly tried to get relief for it.

(e) Finally, and perhaps the greatest travesty of justice, - the trial court placed an injunction on

the Petitioner preventing him from unobstructed use of the legal process in common with all citizens of Maine, including all lawyers. With Spickler's record, it could be convincingly argued that the punishment was meted out to Spickler because he learned too well how to protect his interests against his adversaries, and, with that record, he has become an adversary of the lawyer-judge oligarchy in Maine.

What other theory makes sense?

Did Spickler raise all of these points in the trial court and the appeals court? He did, many times, on the record, loudly and clearly.

Did he remind the trial court and the appeals court, while they were abusing him, that they were doing it in violation of 42 U.S.C. Sec. 1983? Of course he didn't, and he wasn't required to do it, either. The acts themselves are so obviously covered by the Code that a high school civics student would recognize the infringement.

2. All of the above is supported by the record.

3. If the conduct of the trial court shows that it bent over backwards to "help" the Spicklers, Petitioner asks to be shown how and when it happened.[10]

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[10]This is another of those many times when Respondents make a purported statement of material fact and do not, and cannot, show any support for it in the record.

4. Petitioner's statements of facts on this issue are not vague nor inaccurate and misleading. If they are, why doesn't Respondents' counsel show where, when and how they are as they claim? They don't, because they cannot do it.

5. Petitioner does not disagree that the trial court had discretionary powers to decide whether it was wrong or right for Mr. Robitzek to shove Spickler around. However, under the circumstances, it was an abuse of discretion, reflecting the policy of the trial court not to treat Spickler equally during court proceedings. It bears repeating the question: - What would have happened if Spickler were one-half the age of Mr. Robitzek and he shoved Robitzek around?

If that had happened, Spickler would have been found to be in criminal contempt and his entire case against the bank would have been dismissed. This is the unequal treatment he would have received if the tables were turned.

The state court would have been consistently against him, no matter on which side Spickler was to stand.

RESPONDENTS' ARGUMENT II.

THE RESPONDENTS CONTINUE THEIR STRATEGY OF SAYING THINGS THAT ARE ABSOLUTELY WITHOUT FOUNDATION.

Respondents say, again without any basis in law or fact, that the Petitioner's claims are insubstantial and frivolous.

Petitioner, in all of his briefing thus far, does not make a statement of fact without immediately citing the support for it. Have the Respondents made a single factual statement that would ordinarily be material to this Petition for which they have shown where it happened in the record? If there is one, Petitioner has not been able to find it.

Petitioner's claims are substantial and sound, and the Respondents know it.

RESPONDENTS' ARGUMENT III.

THERE ARE VERY IMPORTANT REASONS FOR A WRIT OF CERTIORARI.

First, here is a classic case where a state court has apparently gone beserk in its absolute refusal to recognize the Fourteenth Amendment guarantees, as well as the right of an individual to seek relief for harm done to him in violation of a specific federal statute.

Second, This awesome conglomerate of billion dollar affiliates which Defendant Key Bank is, has violated federal law. Key Bank has clear and obvious contempt of that law (the RICO Act) shown when it permitted its employee, Mr. Richard Lucas, to perjure himself before the jury, and placing into the record false documents to cover up for his employer's violation of the law.

Thousands of banks across the fifty states should be reminded that the hand of justice will not

tolerate such conduct, no matter how many high powered law firms represent the offenders.

Third, this Honorable Supreme Court should go on the record that a pro se party will, if he has ground, have his claim reviewed, no matter how many high-powered attorneys oppose him, and that those high-powered attorneys will not prevail only by the use of rhetoric, innuendo and pretended facts, or by citing inapplicable law, hoping to avoid a final review.

RESPONDENTS' ARGUMENT IV.

THIS PETITION FOR REVIEW IS BASED EXCLUSIVELY ON FEDERAL GROUNDS.

NO STATE LAW WAS EVER RAISED BY EITHER THE RESPONDENTS OR THE JUDGES CONCERNING THE ISSUES PRESENTED IN THIS PETITION.

Respondents, again, try to create confusion by arguing that the issues presented are exclusively concerned with state law which, of course is wrong.

PETITIONER MUST NOW REPLY TO THE INCLUSION IN RESPONDENTS' APPENDIX (at 6a), THE DECISION IN ROBERT D. SPICKLER V. ROGER P. DUBE ET AL., 87-1963 CA 1st.Circ.) June 22, 1988 [Marked: Not for Publication].

Facts:

1. This was an injunction issued ex parte - Spickler was not present.
2. In that case, prior to the sitting of Judge Mazzone, U.S. District Court Judge Gene Carter

found that there was the likelihood that Spickler would prevail in his claim against the defendants.

3. Judge Mazzone subsequently refused to issue an injunction to the state court against R. D. Realty's concurrent case against Dube and Levenson, stating in his Decision:

"The merits of the Spickler claim were not reached in the District Court."

4. Spickler also sought a writ of certiorari as he does here, and that petition was denied. If it had not, perhaps this petition would not have been necessary.

RESPONDENTS CALL SPICKLER A PROLIFIC PRO SE LITIGATOR. (Page 8 of their Brief)

By the appellation "prolific", which means fruitful, the Respondents have finally described the Petitioner with accuracy.

Petitioner agrees his pro se efforts have been fruitful - but only when the courts permit him to see his claims through to a jury. He asks that the United States Supreme Court, in view of his history of "fruitful", not "baseless" lawsuits, advise the Maine Supreme Court to reconsider its treatment of him in this case and vacate the injunction.

CONCLUSION

This suit was filed in the Maine Superior Court in March 1985. From 1985 until 1990 when the case was in a posture for trial, the Bank, which was

being represented by its own legal staff, employed the Simmons/Robitzek law firm to take this case through the trial.

The Simmons firm is notorious for its representation of defendants in criminal cases.

It is obvious that the bank knew that it had seriously and illegally harmed the plaintiffs and knew that they needed Simmons and company to get them out of the mess in which they had put themselves.

Simmons and company, being the experienced lawyers that they are, quickly recognized that the Spickler claims were legitimate and hard to defend head on. Therefore, they devised a strategy of disruption, resorting to a classic "rape defense", and began to attack the character of Spickler, in an effort to convince the judges that Spickler brought only baseless lawsuits, indiscriminately.

They knew that the judges, most of whom were appointed by Governor Joseph Brennan, might have a bias, latent or otherwise, against Spickler for "Picking on the Governor" and they planned to take advantage of it.

They were successful with this strategy because, unless this Honorable Court acts, the record will clearly indicate <u>forever</u> that Spickler was a guy who lived in Maine and apparently <u>always</u> sued people on frivolous grounds.

PETITIONER DOES NOT DESERVE THIS REPUTATION.

This Court is asked to exemplify by granting the writ, that it is possible for a pro se petitioner to get a review from the United States Supreme Court of a state court's decision in a civil matter.

This may permit Petitioner to present his claims to a jury so that those claims will see the light of day as they should have been permitted by the trial judge almost two years ago.

Signed at Phippsburg, Maine this 23rd day of June 1993.

Robert D. Spickler,
Petitioner pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

NO.92-1830

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

REPLY BRIEF APPENDIX

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-85-687

ROBERT D. SPICKLER
Plaintiff
v.
LEO GREENBERG and
THE HARBOR SHOP, INC.

VERDICT FORM

Did the defendant, Leo Greenberg, commit perjury when he testified under oath at the trial in 1984, that at the time he signed the purchase and sale agreement on March 7, 1979, Robert Spickler assured him that he would receive a net of $200,000.00 for the sale of his business and that the Flynns would be responsible for paying Mr. Spickler's commission?

__X__ YES _____ NO

DATED: May 20, 1993

/s/ Christine A. Joyce
Jury Foreperson

Number of Jurors concurring in verdict 8
Number of Jurors not concurring in verdict 0